

STATE OF MICHIGAN
COURT OF APPEALS

WILLIAM JOSEPH COLEMAN,
Plaintiff-Appellant,

v

OTIS M. UNDERWOOD, JR.,
Defendant-Appellee.

UNPUBLISHED
March 27, 2007

No. 266998
Oakland Circuit Court
LC No. 2005-064975-PS

Before: Servitto, P.J., and Talbot and Schuette, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court judgment entered pursuant to MCL 418.863, which stated that defendant Underwood was entitled to \$19,273.70 in attorney fees and costs for his representation of plaintiff in a worker's compensation action. Plaintiff agreed with the amount of fees and costs determined by the worker's compensation magistrate, but wanted the circuit court to resolve his claim that defendant was withholding a greater sum and owed plaintiff the difference. The court concluded that it had authority under MCL 418.363 to enter a judgment in accordance with the magistrate's determination, but lacked jurisdiction to resolve other issues concerning defendant's retention of funds. We affirm. We decide this case without oral argument under MCR 7.214(E).

I. STANDARD OF REVIEW

"The existence of jurisdiction is a question of law that this Court reviews de novo." *Trostel, Ltd v Dep't of Treasury*, 269 Mich App 433, 440; 713 NW2d 279 (2006).

II. ANALYSIS

In this case, plaintiff filed a complaint under MCL 418.863, which states:

Any party may present a certified copy of an order of a worker's compensation magistrate, an arbitrator, the director, or the appellate commission in any compensation proceeding to the circuit court for the circuit in which the injury occurred, or to the circuit court for the county of Ingham if the injury was sustained outside this state. The court, after 7 days' notice to the opposite party or parties, shall render judgment in accordance with the order unless proof of payment is made. The judgment shall have the same effect as though rendered in

an action tried and determined in the court and shall be entered and docketed with like effect.

Under MCL 418.841(1), “[a]ny dispute or controversy concerning compensation or other benefits shall be submitted to the bureau and all questions arising under this act shall be determined by the bureau or a worker’s compensation magistrate, as applicable.” The payment of attorney fees for services under the Worker’s Disability Compensation Act, MCL 418.101 *et seq.* is subject to the approval of a worker’s compensation magistrate. MCL 418.858(1). The matter may be pursued before the Bureau and, if necessary, the Worker’s Compensation Appellate Commission. *In re Attorney Fees of Kelman, Loria, Downing, Schneider & Simpson*, 406 Mich 497, 504-506; 280 NW2d 457 (1979).

Where an action is brought in circuit court under MCL 418.863 to enter a judgment in accordance with a magistrate’s order, the court generally has no discretion to modify the terms of the award absent proof of payment. *Simm v City of Dearborn*, 54 Mich App 263, 265; 220 NW2d 768 (1974); see also *Bush v Detroit*, 129 Mich App 658, 661; 341 NW2d 859 (1983). In *Simm*, the plaintiff moved for entry of a judgment pursuant to a worker’s compensation award, but the defendant employer claimed that it was entitled to a setoff. This Court concluded that the issue of setoff was not properly before the circuit court in the action to enforce the award under MCL 418.863, because the provision “leaves the trial court with no discretion absent proof of payment,” and defendant had not offered such proof. *Id.* at 265.

Plaintiff’s claim that defendant was withholding funds in excess of the fees and costs to which he was entitled is comparable to the claim of setoff in *Simm*, *supra*. Absent “proof of payment,” the trial court’s authority under MCL 418.863 was limited to rendering judgment in accordance with the award. Whether defendant received and retained funds in excess of the fees and costs to which he was entitled is a dispute relating to worker’s compensation and must be determined in accordance with the WDCA, not in an action under MCL 418.863.¹

Affirmed.

/s/ Deborah A. Servitto

/s/ Michael J. Talbot

/s/ Bill Schuette

¹ Even after issuing a final order, the Bureau is authorized to address compliance with its orders under 1984 AACRS, R 408.35.